

AMENDED IN SENATE JULY 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 108

Introduced by Assembly Member La Malfa

January 13, 2003

An act to amend Section 664 of the Penal Code, relating to attempted murder.

LEGISLATIVE COUNSEL'S DIGEST

AB 108, as amended, La Malfa. Attempted murder: custodial officers.

Existing law provides that an attempt to commit willful, deliberate, and premeditated murder, as defined, is punishable by imprisonment in the state prison for life with the possibility of parole. Existing law further provides that an attempted murder of a peace officer or firefighter, as defined, committed under specified circumstances, is punishable by imprisonment in the state prison for life with the possibility of parole, or by 15 years to life if it is also proven that the attempt was willful, deliberate, and premeditated.

This bill would provide that the elements defining the crime of attempted murder of a police officer or firefighter, and the penalties therefor, also apply to the attempted murder of a custodial officer, as defined.

This bill would provide that its provisions would not become operative unless SB 219 is enacted and becomes effective on or before January 1, 2004.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 664 of the Penal Code is amended to
2 read:

3 664. Every person who attempts to commit any crime, but
4 fails, or is prevented or intercepted in its perpetration, shall be
5 punished where no provision is made by law for the punishment
6 of those attempts, as follows:

7 (a) If the crime attempted is punishable by imprisonment in the
8 state prison, the person guilty of the attempt shall be punished by
9 imprisonment in the state prison for one-half the term of
10 imprisonment prescribed upon a conviction of the offense
11 attempted. However, if the crime attempted is willful, deliberate,
12 and premeditated murder, as defined in Section 189, the person
13 guilty of that attempt shall be punished by imprisonment in the
14 state prison for life with the possibility of parole. If the crime
15 attempted is any other one in which the maximum sentence is life
16 imprisonment or death, the person guilty of the attempt shall be
17 punished by imprisonment in the state prison for five, seven, or
18 nine years. The additional term provided in this section for
19 attempted willful, deliberate, and premeditated murder shall not
20 be imposed unless the fact that the attempted murder was willful,
21 deliberate, and premeditated is charged in the accusatory pleading
22 and admitted or found to be true by the trier of fact.

23 (b) If the crime attempted is punishable by imprisonment in a
24 county jail, the person guilty of the attempt shall be punished by
25 imprisonment in a county jail for a term not exceeding one-half the
26 term of imprisonment prescribed upon a conviction of the offense
27 attempted.

28 (c) If the offense so attempted is punishable by a fine, the
29 offender convicted of that attempt shall be punished by a fine not
30 exceeding one-half the largest fine which may be imposed upon a
31 conviction of the offense attempted.



(d) If a crime is divided into degrees, an attempt to commit the crime may be of any of those degrees, and the punishment for the attempt shall be determined as provided by this section.

(e) Notwithstanding subdivision (a), if attempted murder is committed upon a peace officer or firefighter, as those terms are defined in paragraphs (7) and (9) of subdivision (a) of Section 190.2, or a custodial officer, as that term is defined in subdivision (a) of Section 831.5, and the person who commits the offense knows or reasonably should know that the victim is such a peace officer, firefighter, or custodial officer engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.

SEC. 2. *The provisions of this measure shall not become operative unless Senate Bill 219 is enacted and becomes effective on or before January 1, 2004.*

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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